

DIVISION X

AGREEMENT

THIS AGREEMENT, made and entered into by and between the Board of County Commissioners of Lake County, a political subdivision of the State of Florida, hereinafter designated the COUNTY, and Wagner 3 Ventures, Inc., authorized to do business in the State of Florida, with principal place of business located at 605 West Magnolia Street, Leesburg, Florida 34748 hereinafter designated the CONTRACTOR,

WITNESSETH:

That for and in consideration of the sum of **One Million Thirty Seven Thousand Three Hundred Eighty Six Dollars and 88/100 (\$1,037,386.88)** to be paid by the COUNTY to the CONTRACTOR as herein provided, and in further consideration of the mutual covenants and promises to be kept and performed by and between the parties hereto, it is agreed as follows:

A. THE CONTRACTOR AGREES:

1. To furnish all services, labor, materials and equipment necessary for the complete performance, in a thorough and workmanlike manner, of the work contemplated under **GREEN MOUNTAIN SCENIC BYWAY NORTHSORE OVERLOOK AND TRAILHEAD; Project No. 2012080006; Bid No. 13-0604; FPN: 431435-1-58-01; FAN: 8886-131-A**, in Lake County, Florida, to comply with the applicable standards, and to perform all work in strict accordance with the terms of the Contract Documents, defined in Section D of this Agreement.

2. To commence work under this contract with an adequate force and equipment within thirty (30) consecutive calendar days after receipt of written notice from the COUNTY to proceed hereunder, and to fully complete all necessary work under the same within not more than One Hundred Eighty (180) consecutive calendar days. It is understood and agreed that

the date on which the consecutive calendar days will begin to be charged to the project shall be the thirtieth (30th) calendar day from the date of receipt of the Notice to Proceed. Time of performance and completion of the work of this contract is of the essence.

3. That upon failure to complete all work within the time provided for above, the Contractor shall pay to the County such sums as shall be determined in accordance with the Liquidated Damages provision of this contract, and the payment of such sum shall be secured as provided for therein.

4. That the CONTRACTOR and each subcontractor shall furnish to the COUNTY, upon demand, a certified copy of the payroll covering work under this contract, together with such other information as may be required by the COUNTY to ensure compliance with the law and the provisions of this contract.

5. To procure and maintain all insurance as required by the Instructions to Bidders.

6. To procure and maintain all permits and licenses which may be required by law in connection with the prosecution of the work contemplated hereunder, except for those permits obtained by the County as expressly set forth in Division P of the Contract Documents.

7. To permit any representative(s) of the COUNTY, at all reasonable times, to inspect the work in progress or any of the materials used or to be used in connection therewith, whether such work is located on or off the project site, and to furnish promptly, without additional charge, all reasonable facilities, labor and materials deemed necessary by the County's Engineer, for the conducting of such inspections and tests as he may require.

8. Unless otherwise provided in the special provisions, conditions and specifications, to assume liability for all damage to work under construction or completed, whether from fire, water, winds, vandalism, or other causes, until final completion and acceptance by the County and notwithstanding the fact that partial payments may have been made during construction.

9. No subcontract or transfer of contract shall in any case release either the Contractor or his surety of any liability under the contract and bonds. The County reserves the right to reject any subcontractors or equipment.

10. The Contractor shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the County from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons or property by or from the said Contractor; or by, or in consequence of any neglect in safeguarding the work; or through the use of unacceptable materials in the construction of improvements; or by, or on account of any act or omission, neglect or misconduct of the said Contractor; or by, or on account of, any claim or amounts recovered for any infringement of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Workers' Compensation Law" or of any other laws, by-laws, ordinance, order or decree, including any joint negligence of the County, except only such injury or damage as shall negligence of the County, except only such injury or damage as shall have been occasioned by the sole negligence of the County; and so much of the money due the said Contractor under and by virtue of his Contract as shall be considered necessary, may be retained by the County or, in case no money is due, his surety shall be held until such suits, actions or claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the County. The County and the Contractor agree the first \$100.00 of the Contract amount paid by the County to the Contractor shall be given as separate consideration for this indemnification, and any other indemnification of the County by the Contractor provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by the Contractor by the Contractor's execution of the Agreement.

The Contractor shall guarantee the payment of all just claims for materials, supplies, tools, labor or other just claims against him or any subcontractor in connection with this Contract; and his bonds will not be released by final acceptance and payment by the County unless all such claims are paid or released.

B. THE COUNTY AGREES:

To pay to the Contractor the contract price hereinabove specified, as follows:

If progress satisfactory to the County is being made by the Contractor, the Contractor will receive partial payments, not more frequently than once a month, on this contract as the work progresses, based upon estimates of the amount of work done less payments previously made. In each case 10% of each progress payment shall be withheld as retainage until 50% completion of the project. After 50% completion of the project, the County shall withhold 5% of each subsequent progress payment. Payment of retainage shall be as set forth in Section 218.735, Florida Statutes. Neither progress payment nor partial or entire use or occupancy of the project by the County shall constitute an acceptance of work not in accordance with the Contract Documents.

The County, prior to making of any payment, may require the Contractor to furnish a certificate or other evidence showing the amount of work done or completed at that time.

C. IT IS MUTUALLY AGREED:

1. That no change, alteration, amendment, payment for extra work or agreement to pay for same, shall be binding upon the County until its Engineer has approved the same, and until the same shall be properly approved in accordance with Board policy.

2. That the Engineer shall represent the County insofar as prosecution of the work, and interpretation of the plans and specifications are concerned, and that no payments shall be made by the County under this contract except upon the certificate of the Engineer.

3. This Contract shall be interpreted under and its performance governed by the laws of the State of Florida.

4. The failure of the County to enforce at any time or for any period of time any one or more of the provisions of the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its rights thereafter to enforce each and every such provision.

5. Each of the parties hereto agrees and represents that this Contract comprises the full and entire agreement between the parties affecting the work contemplated, and that no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to execution hereof shall be deemed merged into, integrated and superseded by this Contract.

6. Should any provision of this Contract be determined by a court to be unenforceable, such determination shall not affect the validity or enforceability of any section or part thereof.

D. Contract Documents. The following named Documents, which shall be referred to as the "Contract Documents," are by reference hereby incorporated into this contract:

- DIVISION A Instructions to Bidders
- DIVISION B General Conditions
- DIVISION C Federal Requirements
- DIVISION P Permits
- DIVISION W Proposal and Bid
- DIVISION Y Performance Bond & Payment Bond
- DIVISION Z Affidavit by General Contractor

- APPENDIX A1 "Sample Change Order"
- ADDENDUM #1 through #4, dated June 17, 2013; June 19, 2013; June 28, 2013; and July 8, 2013
- Construction Plans prepared by the Engineer of record for this project.

E. Notices.

1. All notices, demands, or other writings required to be given or made or sent in this Contract, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when in writing and addressed as follows:

County
 County Manager
 P. O. Box 7800
 315 West Main Street
 Tavares, Florida 32778-7800

Contractor
 Kenneth Wagner
 P.O. Box 490106
 Leesburg, Florida 34749

CC: Public Works Director
 437 Ardice Avenue
 Eustis, FL 32726

2. All notices required, or which may be given hereunder, shall be considered properly given if (a) personally delivered, (b) sent by certified United States mail, return receipt requested, or (c) sent by Federal Express or other equivalent overnight letter delivery company.

3. The effective date of such notices shall be the date personally delivered, or if sent by mail, the date of the postmark, or if sent by overnight letter delivery company, the date the notice was picked up by the overnight letter delivery company.

4. Parties may designate other parties or addresses to which notice shall be sent by notifying, in writing, the other party in a manner designed for the filing of notice hereunder.

F. This contract shall be binding upon, and shall insure to the benefit of the executors, administrators, heirs, successors and assigns of the Contractor.

G. Public Records. Pursuant to Section 119.0701, Florida Statutes, the Contractor shall comply with the Florida Public Records' laws, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services identified herein.
2. Provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided for by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.


Failure to comply with this section shall be deemed a breach of the contract and enforceable as set forth in Section 119.0701, Florida Statutes.

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Agreement Between Lake County, Florida and Wagner 3 Ventures, Inc. for Green Mountain Scenic Byway
Northshore Overlook and Trailhead; Bid No. 13-0604

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be
executed on the day and year as written.

LAKE COUNTY acting by and
through its Board of County
Commissioners

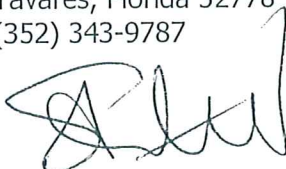

Leslie Campione, Chairman

This 10th day of October, 2013.

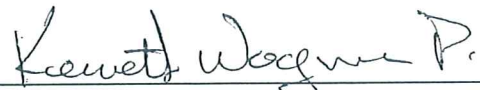
ATTEST:


Neil Kelly, Clerk of the Board of
County Commissioners of Lake County,
Florida

Approved as to form and legality by
County Attorney for Lake County, Florida
Lake County Administration Building
315 West Main Street
Tavares, Florida 32778
(352) 343-9787


Sanford A. Minkoff
County Attorney

WAGNER 3 VENTURES, INC.


Kenneth Wagner, President

This 20th day of September, 2013.

ATTEST: 

Print Name: Kenneth Wagner
Title: Pres.
CORPORATE SEAL

OR

WITNESSES:

Print Name: _____

Print Name: _____

Business Address:
605 W. Magnolia Street
Leesburg, Florida 34748
Contractor's Reg. or Cert. No. CGC015691